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4 BILL NO. S-75-04-14

5 SPECIAL ORDINANCE NO. S- 66-75

6
7 AN ORDINANCE approving Resolution of the Board
8 of Public Works for acquisition of Westmoor
9 Park Community Association Sanitary Sewage
10 Treatment Collection

11 WHEREAS, the Board of Public Works, by Resolution 62-29-16 ,
12 determined it was necessary to enter into an Agreement for the purchase of
13 Westmoor Park Sanitary Sewage System.

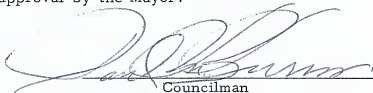
14 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
15 THE CITY OF FORT WAYNE, INDIANA:

16 SECTION 1. That Resolution 62-29-16 of the Board of Public Works
17 approving the Agreement between The City of Fort Wayne and Westmoor Park
18 Community Association, Inc., for:

19 Purchase of Westmoor Park Sanitary Sewage System for \$42,352.24
20 which is the amount of indebtedness to the City. The purchase
21 price shall be paid by the City's forgiving and releasing Westmoor
22 from said indebtedness; all according to the Agreement dated Jan-
23 uary 19, 1975

24 is hereby in all things ratified, confirmed and approved.

25 SECTION 2. This Ordinance shall be in full force and effect from
26 and after its passage and approval by the Mayor.

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Councilman

APPROVED AS TO FORM
AND LEGALITY.


CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197____, at _____ o'clock P.M., E.S.T.

Date: 4/8/75

Shirley D. Waterman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Hinga, and duly adopted, placed on its passage. Passed (~~lost~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	<u>7</u>	<u>1</u>	<u> </u>	<u>1</u>	<u> </u>
BURNS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
HINGA	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
KRAUS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
MOSES	<u> </u>	<u> </u>	<u> </u>	<u>X</u>	<u> </u>
NUCKOLS	<u> </u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
SCHMIDT, D.	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
SCHMIDT, V.	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
STIER	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TALARICO	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

DATE: 4/22/75

Shirley D. Waterman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~Zoning Map~~) (~~General~~) (~~Annexation~~) (~~Special~~) (~~Appropriation~~) Ordinance (Resolution) No. 266-75 on the 22nd day of April, 1975.

ATTEST:

(SEAL)

Shirley D. Waterman
CITY CLERK

James Stier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of April, 1975, at the hour of 2:00 o'clock A. M., E.S.T.

Shirley D. Waterman
CITY CLERK

Approved and signed by me this 23rd day of April, 1975, at the hour of 2:00 o'clock P. M., E.S.T.

Jack Burns
MAYOR

Bill No. S-75-04-14

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance
approving Resolution of the Board of Public Works for acquisition of
Westmoor Park Community Association Sanitary Sewage Treatment Collection

have had said Ordinance under consideration and beg leave to report back to the Common
Council that said Ordinance DO PASS.

Paul M. Burns - Chairman

Donald J. Schmidt - Vice - Chairman

Winfield C. Moses, Jr.

William T. Hinga

Eugene Kraus, Jr.

Paul M. Burns
Donald J. Schmidt
Winfield C. Moses, Jr.
William T. Hinga
Eugene Kraus, Jr.
CONCURRED IN

DATE 4-22-75 CHARLES W. WESTERMAN, CITY CLERK

WESTMOOR PARK - SANITARY SEWAGE SYSTEM

WHEREAS the City of Fort Wayne entered into an agreement with Westmoor Park Community Association, Inc. dated January 29, 1969 for the treatment of sewage, on a wholesale basis, from the Westmoor area, and

WHEREAS the City of Fort Wayne entered into an agreement with Diversified Utilities on November 26, 1968 describing certain areas of service including the Westmoor area, and

WHEREAS due to difficulties in collecting monthly fees, the Westmoor Association has become delinquent in charges to the City, and

WHEREAS the City of Fort Wayne has recently annexed much of the area served in Westmoor, and

WHEREAS the sewer system in Westmoor is in need of maintenance and major repair or reconstruction, and

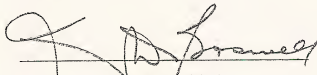
WHEREAS to resolve the problems existing and satisfying commitments made in previous agreements, a new agreement entitled "Agreement to Purchase Westmoor Park Community Association, Inc.'s Sanitary Sewage Collection System" dated January 19, 1975 has been prepared and attached hereto.

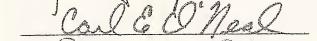
NOW, THEREFORE, be it resolved by the Board of Public Works of the City of Fort Wayne:

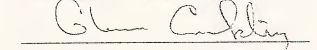
1. City shall purchase the Westmoor Park Sanitary Sewage System for \$42,352.24, which is the amount of indebtedness to the City. This purchase price shall be paid by the City's forgiving and releasing Westmoor from said indebtedness; all according to Agreement dated January 19, 1975.
2. The areas affected are represented by the attached Exhibit "A".
3. Upon approval of the agreement by Common Council, all provisions therein are to be implemented.

Ordered agreement sent to the Common Council Tuesday, April 8, 1975 at 8:00 P.M.

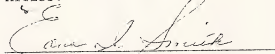
BOARD OF PUBLIC WORKS







ATTEST:



Clerk

AGREEMENT TO PURCHASE
WESTMOOR PARK COMMUNITY ASSOCIATION, INC.'S
SANITARY SEWAGE COLLECTION SYSTEM

THIS AGREEMENT, made and entered into on this 19th day of January, 1975, by and between WESTMOOR PARK COMMUNITY ASSOCIATION, INC., an Indiana not-for-profit corporation (hereinafter referred to as "Westmoor"), and THE CITY OF FORT WAYNE, an Indiana municipal corporation (hereinafter referred to as "City");

W I T N E S S E T H:

FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein, the parties covenant and agree as follows:

1. SALE AND TRANSFER OF ASSETS:

Westmoor agrees to sell, convey, grant, deliver and transfer to City, and City agrees to purchase and accept from Westmoor, upon the terms and conditions hereinafter set forth, fee simple and unencumbered title and ownership of all lines, mains, pumps, motors, meters, equipment, used or useful in the operation of its sanitary sewage collection system including all lines, sewers, laterals, service connections, pumping stations, manholes, valves, equipment, and all other assets used or useful to the said collection system and appurtenances thereto, accounts receivable, cash, bank accounts, records, and all easements and interest in real estate in which any sewers, equipment, or lines constituting a part of the said system are located in Westmoor Extended Addition, Terrace Estates, Christle's Addition, or any other location in Wayne Township, Allen County, Indiana, and Lot 11 in Westmoor Park Extended Addition to the City of Fort Wayne..

2. PURCHASE PRICE AND TERMS:

(a) The purchase price shall be 42,352.24
(\$) Dollars.

(b) The total purchase price shall be paid by the City's forgiving and releasing Westmoor from any indebtedness it has to the City at the time of closing this sale, and purchase for the City accepting for treatment sewage collected by Westmoor and discharged

into the City's Westmoor Pumping Station prior to the time of closing this transaction. There will be no further payment required from the City.

3. TAXES AND ASSESSMENTS:

Westmoor shall pay all taxes, both real and personal, assessed against the system assets which are due and payable in 1974 and 1975. Westmoor shall pay any assessments or charges upon the system assets for public improvements which on the date hereof are constructed or installed on or about any real or personal assets or part of the system.

4. POSSESSION, SERVICE PAYMENTS AND ACCOUNTS RECEIVABLE:

(a) Possession of the system assets shall be delivered by Westmoor to City on or before the date of closing.

(b) All payments for sanitary sewer service by customers of the system received by Westmoor or City shall be the property of the City, all of Westmoor's accounts receivable as of the date of closing shall become the property of City and such accounts are to be paid to the City. Should any of Westmoor's customers pay said accounts receivable or any part thereof directly to the City or Westmoor before or after the closing of this transaction, such payments shall be the City's property and Westmoor shall remit any accounts so received to the City upon receipt of same. The City is, however, under no obligation to Westmoor to collect said accounts receivable.

5. WESTMOOR'S REPRESENTATIONS AND WARRANTIES:

Westmoor as an inducement and as part of its covenants in this agreement represents and warrants:

(a) It is a duly formed and validly existing corporation formed under the Indiana General Not-For-Profit Corporation Act and in good standing with the Office of the Secretary of State of the State of Indiana;

(b) It has full corporate capacity to own real estate, a sewage collection system, to enter into this agreement and to perform all of the terms and conditions herein set forth; and

(c) It is the owner of a fee simple title to the sanitary sewage collection system referred to herein, which said title is unencumbered except for real estate taxes which are not delinquent; and

(d) The use of the real estate and easements for sanitary sewage collection and treatment purposes is not restricted or prohibited by any land use restrictions imposed either by zoning authorities or prior titleholders and that, if such restrictions do exist, Westmoor will, at its expense, obtain all releases and/or permits necessary to remove all such prohibitions or restrictions; and

(e) That the entire system is located wholly on and within the real estate and easements owned and in favor of Westmoor, its successors and assigns or easements which have been dedicated for public utility use, so far as is now known and can be reasonably ascertained.

6. PLANS, DRAWINGS AND EASEMENTS:

Westmoor on or before the time of closing will present and deliver to City any and all diagrams, plans, drawings, surveys, abstracts and all other written documentation which it presently has which show and describe the location of all sewers, lines, laterals, pumping stations, manholes, valves and appurtenances used in the system, together with a copy of all easements to be conveyed to City under the terms hereof. Should any of the said sewers, lines, laterals, pumping stations, manholes, valves or other appurtenances be not located wholly on and within the real estate or recorded easements, Westmoor shall cooperate with City in obtaining all such necessary easements and any such additional easements obtained shall be conveyed to City under the terms hereof, without additional consideration from City.

7. CLOSING:

This sale and purchase agreement shall be closed in the office of the City's Board of Works, City-County Building, Fort Wayne, Indiana, as soon as all of the following occur:

(a) Westmoor's title to the real and personal property which are the assets of the said system meets necessary legal requirements; and

(b) Westmoor obtains approval of this agreement and the rate structure for services to be rendered by the City set forth herein, by its Board of Directors and its members, and supplies certified copies of resolutions to this effect; and

(c) Westmoor delivers properly prepared and executed General Warranty Deed, Bill of Sale, and Assignments transferring all of the assets of its said sewage collection system and easements used for the same, in the same condition they now are, usual wear and tear excepted, to the City; in the event said assets and easements cannot be transferred and conveyed to the City in substantially their present condition, usual wear and tear excepted, this Agreement, at City's election, shall not be binding on City; and

(d) Westmoor evidences payment of any and all Indiana Gross Income taxes due and payable as a result of the transfer of assets involved in this transaction; and

(e) The Common Council of the City of Fort Wayne approves this agreement; and

(f) John N. Pichon, Jr., as Trustee in Reorganization of Diversified Utilities, Inc., releases by valid written instrument any interest which he may have to serve the Westmoor service area by virtue of the written agreement between City and said John N. Pichon, Jr., dated November 26, 1968.

8. SERVICE TO BE RENDERED BY CITY:

Immediately upon closing of this transaction the City will collect and treat all sewage lawfully entering into the Westmoor service area, being lots numbered 1 through 176, inclusive, in Westmoor Extended Addition, Terrace Estates, and Lots number 10 through 15, inclusive, in Christle's Addition, or any other location in Wayne Township, Allen County, Indiana.

9. RATES, SERVICES AND CHARGES:

For the sewage collection and treatment service hereinbefore described, each single family residential customer shall be charged and billed directly by the City and shall pay to the City a flat rate of \$5.40 per month for each month or any part thereof that such service is rendered by the City. The City will repair and improve the sanitary sewage collection system as necessary without any further charge or assessment to such rate paying customers. This flat rate charge shall continue for a period of six (6) years from the time of closing this transaction. At the end of said six (6) year period, the rate for services shall be the normal rate for such sewage collection and treatment services then in effect for the City.

The above rates may, however, be subject to revision from time to time during the term of this contract, at such time as all the rates and charges for the sanitary sewer service of City are reviewed and approved at a public hearing of the Common Council of the City of Fort Wayne.

10. MAINTENANCE AND OPERATION OF THE SYSTEM:

From the time of closing this transaction the maintenance and operation of said sanitary sewage collection system shall be the obligation of the City. It is further understood and agreed by and between the parties hereto that the City has no obligation under this agreement to repair, improve, maintain, or operate any storm or surface water collection system in the service area described herein.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

WESTMOOR PARK COMMUNITY ASSOCIATION, INC.

BY Karen L. Branum
Its President (Karen L. Branum)
BY Karen S. Peckham
Its Secretary (Karen S. Peckham)

CITY OF FORT WAYNE, INDIANA

BY Ivan A. Lebamoef
IVAN A. LEBAMOEF, Its Mayor

BOARD OF PUBLIC WORKS

BY Frank D. Brumey
Its Chairman

ATTEST:

Carl E. O'Neal
Member

Glen Conklin
Member

Edna L. Smith
Clerk

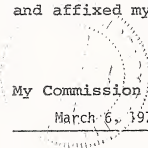
APPROVED AS TO FORM AND LEGALITY

Ralph R. Blume
Ralph R. Blume
Associate City Attorney

STATE OF INDIANA)
)SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this 2nd day of April, 1975, personally appeared the within named Ivan A. Lebamoff, Mayor and Chief Executive Officer of the City of Fort Wayne, Indiana; the within named Jerry D. Boswell, C. E. O'Neal, Glenn G. Conkling, and Edna I. Smith, Chairman and Members of the Board of Public Works of the City of Fort Wayne, Indiana, to me personally known, who, being by me duly sworn, said they are respectively the Mayor and Chief Executive Officer of the City of Fort Wayne, the Chairman and Members of the Board of Public Works of the City of Fort Wayne, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, and its sewage departments with full authority so to do, and acknowledged said instrument to be the voluntary act and deed of said Department and said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.


Anne J. Zax
Notary Public

My Commission Expires:

March 6, 1976

STATE OF INDIANA)
)SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State personally appeared Karen L. Branum and Karen S. Peckham, to me known, and known by me to be the persons who are the President and Secretary, respectively, of Westmoor Park Community Association, Inc., the corporation which executed the foregoing instrument, signed the same, and acknowledged to me that they did so sign said instrument in the name and on behalf of said corporation as said officers, respectively; that the same is their free act and deed as such officers, respectively, and the free and corporate act of said corporation, and stated that they were duly authorized thereto by the Board of Directors and members of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, this 19th day of January, 1975.

John E. Hoffman
Notary Public

My Commission Expires:

12/14/75

LEGAL DESCRIPTION OF EXHIBIT "A"

Westmoor Extended Addition	As recorded in Plat Book 22, Page 156-158.
Christle's Extended Addition	Lots 10-15 inclusive as recorded in Plat Book 16, Page 80.

Terrace Estates

Terrace Estates Section A	As recorded in Plat Book 29, Page 47-48.
Terrace Estates Section B	As recorded in Plat Book 29, Page 105.
Terrace Estates Section C	As recorded in Plat Book 30, Page 34.

SPACE DESCRIPTION

The following described space located with the Northwest 1/4, Northwest 1/4 Section 8, Township 30 North, Range 12 East. More particularly described as follows : Beginning at the Southeast corner of Lot No. 27 of Terrace Estates Section C as recorded in Plat Book 30, Page 34, said corner more particularly described as being located 30± lineal feet east of the northwest corner of Lot No. 11 of Terrace Estates Addition, Section A as recorded in Plat Book 29, Page 47-48; thence Easterly a distance of 310 feet; thence South by deflection right of 90 degrees, 29 minutes, and project a distance of 19.8 feet; thence East by deflection, left of 90 degrees, 0 minutes and project a distance of 66.6 feet; thence southeasterly on a 126.4 feet radius curving to the right, a distance of 66.2 feet to a point of tangency; thence continuing on said tangent a distance of 12.4 feet to a point; thence southeasterly on a 28 foot radius curving to the left a distance of 14.1 feet to a point of tangency. Thence East on said tangent a distance of 72.3 feet to the centerline of Reckeweg Road; thence Northly 477± lineal feet along the centerline of said Reckeweg Road to a point located 524± lineal feet south of the north line of said Northwest 1/4 Section 8; thence Westerly 530± lineal feet to a point on the East line and 10± lineal feet south of the Northeast corner of Lot No. 26 of said Terrace Estates Section C; thence South along the East line of said Lot No. 26 and Lot No. 27 of said Terrace Estates Section C to the southeast corner of Lot No. 27 being the poing of beginning.



THE CITY OF FORT WAYNE
board of public works

April 8, 1975

The Common Council
Fort Wayne, Indiana

Gentlemen and Mrs. Schmidt:

A Special Ordinance will be introduced in Council April 8, 1975 on an Agreement and Resolution concerning the Westmoor Park Sewage Collection System.

The purpose of the Agreement between the Westmoor Park Community Association and the City is to allow the City to take over Westmoor's sewage collection system. This is necessitated because Westmoor is in arrears on their payments to the Utilities for sewage treatment in the amount \$42,352.25.

The Agreement provides for the City's purchase of the facilities for the amount of the delinquency. Therefore, no cash monies are involved.

After Councilmanic approval and closing of the transaction, the Utility will be receiving the revenue from the individual costumers.

In order to facilitate the transfer of customers and establish the billing, we are anxious to set a closing with Westmoor Community Association. We are, therefore, requesting "Prior Approval" of the Agreement.

Sincerely,


Dr. Jerry A. Boswell, Chairman
Board of Public Works

JDB:EP

APPROVED:

DIGEST SHEET

TITLE OF ORDINANCE

Resolution

S-75-04-14 ✓

DEPARTMENT REQUESTING ORDINANCE

Board of Public Works

SYNOPSIS OF ORDINANCE

In 1969 the City entered into an Agreement with the

Westmoor Park Community Association providing for City's treatment of sewage from their
area at a certain rate per cubic foot.

Since Westmoor is delinquent \$42,352.24 on payment to the Utility the City has entered
into an Agreement to take over the Westmoor facilities (purchase) for this amount
of delinquency due.

EFFECT OF PASSAGE

All sewage facilities in the treatment area will become the
property of the city.

EFFECT OF NON-PASSAGE

Continued delinquency and deterioration of the
sewage facility.

MONEY INVOLVED (Direct Costs, Expenditures, Savings)

No cash expenditure
to the Utility.

ASSIGNED TO COMMITTEE (J.N.)

City Utility